



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Ultra Technology Corporation  
**File:** B-230309  
**Date:** April 20, 1988

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### **DIGEST**

1. Protest challenging contracting agency's failure to disclose to offerors participating in a reprocurement the prices submitted by all the offerors in connection with the original procurement, and requesting that award under the reprocurement be stayed pending a decision by the Small Business Administration (SBA) on the protester's appeal of the small business size standard contained in the solicitation, is dismissed as academic because agency released the pricing information sought and the SBA has ruled on the protester's size standard appeal.
2. Where a protest is dismissed as academic because corrective action is taken as requested by the protester, there is no decision on the merits and, therefore, no basis on which protest costs may be recovered.

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### **DECISION**

Ultra Technology Corporation (Ultra Tech) initially raised several objections to the conduct of a procurement under request for proposals (RFP) No. N00600-88-R-1135, issued by the Navy for the maintenance of certain storage and retrieval equipment. The parties now agree that these objections have been resolved to the protester's satisfaction, but the protester claims that, as the "prevailing party" in the matter, it is entitled to the costs of filing and pursuing the protest.

We dismiss the protest and deny the claim for costs.

The RFP was issued on an unrestricted basis on December 2, 1987, as a reprocurement of services originally covered by a contract which had been awarded to Ultra Tech and which was subsequently terminated for the convenience of the

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government; by amendment, the RFP later was totally set aside for small business and was assigned a Standard Industrial Classification (SIC) with a size standard of \$12.5 million.

The protester perceived a competitive inequity among potential offerors under the reprocurement because, as the earlier awardee, its original prices had been released to the public whereas the prices of the other original offerors had not been disclosed. Accordingly, on December 7, Ultra Tech sought release of the other offerors' prices under the Freedom of Information Act (FOIA). Also, believing the designated SIC to be incorrect, on February 10, 1988, Ultra Tech appealed the classification to the Small Business Administration (SBA), requesting assignment of an SIC having a size standard of \$3.5 million. Its protest to our Office was filed on February 26, while the FOIA request and the SBA appeal were still pending.

In its protest, Ultra Tech requested that we recommend that the Navy release the prices of all the original competitors and, after such disclosure, solicit a round of best and final offers (BAFOs). Ultra Tech also requested that we recommend that the Navy withhold award under the RFP pending an SBA ruling on its size standard appeal.

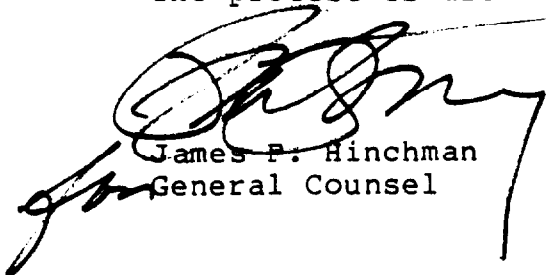
On March 10, the Navy informed us that all the original offerors' prices had been released under the FOIA, and that the contracting officer intended to request BAFOs. We were also informed that SBA issued its decision in the Ultra Tech appeal on March 8; the SBA changed the designated SIC to one with a size standard identical to that requested by the protester. Ultra Tech subsequently confirmed that these events had satisfied its original objections to the procurement. We therefore dismiss the protest as academic. See Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1988).

The protester claims that it is entitled to the costs of filing and pursuing its protest because the corrective actions were solely the product of its own initiatives--i.e., that it was the "prevailing party" in this matter. For the reasons set forth below, we disagree.

It is an essential rule of our bid protest process that a protester's entitlement to costs only arises upon our determination that an agency's procurement actions were in violation of applicable statutes or regulations. See 31 U.S.C. § 3554(c)(1) (Supp. III 1985); 4 C.F.R. § 21.6(d). If our Office does not make such a determination, then a claim for costs is without foundation. Miami Wall Systems, Inc.--Claim for Costs, B-227072.2, July 15, 1987, 87-2 CPD ¶ 49. Where, as here, a protest is dismissed as academic,

there is no decision on the merits of the protest and thus no basis for the award of costs. Global Fuels Limited, Corp., B-225665.2, Mar. 27, 1987, 87-1 CPD ¶ 355.

The protest is dismissed and the claim for costs is denied.



James P. Hinchman  
General Counsel